

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANUEL L. SPILLMAN,

Petitioner,

Case Number: 05-CV-60235

v.

HON. JOHN CORBETT O'MEARA

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER TRANSFERRING SUCCESSIVE PETITION FOR
WRIT OF HABEAS CORPUS TO UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Petitioner Manuel L. Spillman, a state inmate currently incarcerated at the Ryan Correctional Facility in Detroit, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, this Court determines that this is a successive habeas corpus petition and, as such, orders it transferred to the Sixth Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631¹ and 28 U.S.C. § 2244(b)(3)(A).

¹ 28 U.S.C. § 1631 provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed . . .

In the pending petition, Petitioner challenges his 1997 convictions in Recorder's Court for the City of Detroit for first-degree murder and felony firearm. The Court determines that the petition must be transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 2244(b)(3)(A), because it is a successive habeas corpus petition.

Section 2244(b)(3)(A) provides, in pertinent part:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

On May 16, 2000, Petitioner filed a habeas corpus petition in this court challenging the convictions challenged in the pending petition. On April 28, 2001, the District Court denied the petition on the merits. *See Spillman v. Jackson*, No. 00-CV-72203 (E.D. Mich. April 28, 2001) (Hood, J.).

Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a second or successive petition in this Court. The Sixth Circuit has held that "when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631." *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit.

S/JOHN CORBETT O'MEARA
UNITED STATES DISTRICT JUDGE

DATE: August 14, 2006

Certificate of Service

I hereby certify that a copy of this Opinion and Order was served upon Petitioner by U.S. Mail on August 14, 2006.

s/William Barkholz
Case Manager